

ESTTA Tracking number: **ESTTA712732**Filing date: **12/04/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Elemental LED, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	1195 Park Ave., Suite 211 Emeryville, CA 94608 UNITED STATES		

Attorney information	Matthew D. Francis Brownstein Hyatt Farber Schreck, LLP 5371 Kietzke Lane Reno, NV 89511 UNITED STATES mfrancis@bhfs.com Phone:(775) 324-4100
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**Registration Subject to Cancellation**

Registration No	4402344	Registration date	09/17/2013
International Registration No.	NONE	International Registration Date	NONE
Registrant	Crystal Mountain Manufacturing Inc. PO Box 27008, 19967 96th Avenue Langely, BC, V1M3C6 CANADA		

**Goods/Services Subject to Cancellation**

Class 009. First Use: 0 First Use In Commerce: 0

All goods and services in the class are cancelled, namely: Electronic greenhouse and gardening products and controls, namely, electric CO2 controllers, timers, electric fan controllers, light switches, climate controllers, namely, thermostats

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	86363377	Application Date	08/11/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ELEMENTAL LED		

Design Mark	<h1>Elemental LED</h1>
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2008/08/05 First Use In Commerce: 2008/08/05 Electrical devices relating to lighting, namely, electric light dimmers, adapters, battery packs, transformers, power supplies, power controllers and amplifiers, junction boxes, electrical connectors, electrical wires, electrical plugs, light systems comprising light sensors and switches</p> <p>Class 011. First use: First Use: 2008/08/05 First Use In Commerce: 2008/08/05 LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED landscape lights; LED light strips for decorative purposes; LED underwater lights</p>

Attachments	86363377#TMSN.png( bytes ) Petition to Cancel.pdf(279615 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matthew D. Francis/
Name	Matthew D. Francis
Date	12/04/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration of :

Registrant : Crystal Mountain Manufacturing Inc.  
Reg. No. : 4,402,344  
Mark : ELEMENTAL CONTROLS  
Reg. Date : September 17, 2013

<p>ELEMENTAL LED, INC., a Nevada corporation,</p> <p style="text-align:center">Petitioner,</p> <p>v.</p> <p>CRYSTAL MOUNTAIN MANUFACTURING, INC., a Canadian corporation,</p> <p style="text-align:center">Registrant.</p>	<p>Cancellation No.</p>
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**PETITION TO CANCEL**

Petitioner Elemental LED, Inc. ("Petitioner") believes it will be damaged by Registration No. 4,402,344 ("344 Reg.") for the mark "Elemental Controls" (the "Elemental Controls Mark") owned by Registrant Crystal Mountain Manufacturing Inc. ("Registrant"), and therefore petitions the Board to cancel the same. Pursuant to 37 C.F.R. § 2.111(b) and 2.112(a), and as grounds for cancellation, Petitioner alleges as follows:

1. Petitioner is a Nevada corporation with its principal place of business located at 1195 Park Ave., Suite 211 Emeryville, California 94608.
2. Petitioner is engaged in the business of designing, manufacturing, and selling LED (light emitting diodes) and HID (high intensity discharge) lighting fixtures and related goods under various trademarks. One of Petitioner's trademarks is "Elemental LED" (the "Elemental LED Mark").
3. Petitioner is the owner of all common law rights to the Elemental LED Mark

which it has used in commerce since at least August 5, 2008 for the following International Class 009 and 011 goods:

IC 009: Electrical devices relating to lighting, namely, electric light dimmers, adapters, battery packs, transformers, power supplies, power controllers and amplifiers, junction boxes, electrical connectors, electrical wires, electrical plugs, light systems comprising light sensors and switches.

IC 011: LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED landscape lights; LED light strips for decorative purposes; LED underwater lights.

4. Petitioner is also the Applicant of Serial No. 86/363,377 (“377 App.”) for the International Class 009 and 011 goods identified above. The ‘377 App. lists a first use date, and a first use in commerce date as August 5, 2008 for Petitioner’s aforementioned goods.

5. Registrant is a Canadian corporation with an address of P.O. Box 27008, 19967 96th Avenue, Langely, BC CANADA V1M3C6.

6. Registrant is the listed owner of the ‘344 Reg. for the Elemental Controls Mark. The ‘344 Reg. covers the following goods in International Class 009: “Electronic greenhouse and gardening products and controls, namely, electric CO2 controllers, timers, electric fan controllers, light switches, climate controllers, namely, thermostats.” The ‘344 Reg. lists a priority date of June 20, 2011, which was long after Petitioner’s first use of its Elemental LED Mark in commerce. As such, Petitioner’s rights in the Elemental LED Mark are superior to Registrant’s purported rights in its Elemental Controls Mark and the corresponding ‘344 Reg.

7. Prior to Registrant’s filing of its Serial No. 85/467,591 for the Elemental Controls Mark, which matured into the ‘344 Reg., Petitioner’s Elemental LED Mark had become recognized and relied upon by consumers as identifying the quality goods of Petitioner and distinguishing those goods from the goods of others. The Elemental LED Mark therefore represents the goodwill belonging exclusively to Petitioner.

8. Petitioner will be damaged by the registration of Registrant’s Elemental Controls Mark shown in the ‘344 Reg. because that Mark so resembles Petitioner’s Elemental LED Mark

as to be likely to cause consumer confusion, mistake, and/or deception in the minds of the purchasing public. The purchasing public is likely to assume that the goods identified by Registrant's Elemental Controls Mark are sold or offered for sale by Petitioner, or that such goods originate with, or are authorized or approved by, or in some way connected to, Petitioner, in violation of 15 U.S.C. § 1052(d), *et seq.* As a result, Registrant's Elemental Controls Mark protected by the '344 Reg. should be cancelled to pursuant to 15 U.S.C. § 1064, *et seq.*

WHEREFORE, Petitioner prays that Registrant's Registration No. 4,402,344 be cancelled.

Dated: December 4, 2015

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

Matthew D. Francis  
5371 Kietzke Lane  
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(775) 324-4100

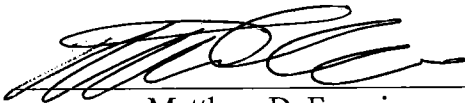
Attorneys for Petitioner  
Elemental LED, Inc.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Law Offices of Brownstein Hyatt Farber Schreck, LLP, and on this date the document entitled **Petition to Cancel**, is being served by first class mail to:

Crystal Mountain Manufacturing Inc.  
Attn: Legal Department  
P.O. Box 27008  
19967 96th Avenue  
Langely, BC CANADA V1M3C6

Dated: December 4, 2015

  
Matthew D. Francis